

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
HATTIESBURG DIVISION**

**ANGELA FULCHER NAPIER,**

**PLAINTIFF**

**VERSUS**

**CIVIL ACTION NO. 2:02cv819-KS-JMR**

**FRIENDS OF CHILDREN OF MISSISSIPPI, INC.,  
MARVIN HOGAN and JANICE MCCULLUM**

**DEFENDANTS**

**ORDER DENYING MOTION TO DISMISS**

This matter is before the court on the defendants' motion to dismiss for the plaintiff's failure to timely serve process, and the court, having reviewed the motion and applicable law, and being thus fully advised in the premises, FINDS that the motion should be denied. The court finds more specifically as follows:

The plaintiff instituted this Title VII action against the defendants on October 28, 2002. She also filed her motion to proceed in forma pauperis. Following three reassignments of the case, final disposition of the motion occurred on June 3, 2005, when it was denied. The plaintiff then moved *ore tenus* for an extension of time to serve the defendants. The motion was granted, and the plaintiff was given an additional twenty days to effect service of process. The defendants were served on June 16 and thereafter timely filed their answer and the instant motion.

According to the defendants, this action must be dismissed because the plaintiff has not shown good cause for her failure to serve process within 120 days after filing the complaint. If this case were subject to former Federal Rule of Civil Procedure 4(j), dismissal may have been mandated. *See McDonald v. United States*, 898 F.2d 466, 468 & n.1 (5th Cir. 1990). But under current rule 4(m), a court is granted discretion to permit an extension of time for service even without a showing of good cause. *Thompson v. Brown*, 91 F.3d 20, 21 (5th Cir. 1996). The plaintiff requested an extension

of time; the court granted an extension of time, and the plaintiff served the defendants within the time granted.

IT IS THEREFORE ORDERED AND ADJUDGED that the defendants' **Motion to Dismiss** [#25] is **DENIED**.

SO ORDERED AND ADJUDGED this the 15th day of November, 2005.

s/ *Keith Starrett*  
UNITED STATES DISTRICT JUDGE